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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Rudi Haimerl

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GUDRUN E. HUCKETT DRAUDT  
SCHUBERTSTR. 15A  
WUPPERTAL, 42289  
GERMANY

EXAMINER

PASCUA, JES F

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/565,638	<b>Applicant(s)</b> HAIMERL ET AL.	
	<b>Examiner</b> Jes F. Pascua	<b>Art Unit</b> 3782	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13, 15-20 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23 is/are allowed.
- 6) ☒ Claim(s) 13, 15-20 and 24-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/20/09</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 13, 15-20 and 24-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification, as originally filed, lacks antecedent basis for "a handle loop part extending between the ends and resting flat without being folded on the support patch". Although the originally filed figures show the handle loop part (4) resting flat on the support patch (6), there is no evidence in the original written specification that applicant intended to preclude folding the handle loop part in order for it to rest flat. This is a new matter rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 13, 15, 16, 25 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,010,004 to Huckriede et al. See Figs. 1-4.

Huckriede et al. discloses a packaging container made of plastic film (column 3, lines 31-33), the packaging container comprising a strap handle (24 of holding device (23)) arranged within a contour of the container; a container wall made of plastic film (column 3, lines 31-33); wherein the container wall has an inner side and the strap handle is arranged on the inner side (Fig. 2); wherein the container wall has a perforated access opening (36) through which access opening the strap handle is accessible from an exterior of the container; a support patch (30 of holding device (23)) made of plastic film (column 3, lines 31-33) and connected with a first face to the inner side of the container wall (Fig. 1); wherein the strap handle is comprised of ends that are glued or attached by a heat seal seam to the first face of the support patch (column 3, lines 43-48) and further comprised of a handle loop part extending between the ends and resting flat without being folded on the support (i.e. part(s) of the strap handle (24) between the fold lines forming the material storage fold (29)) wherein the access opening is closed off relative to an interior of the container by the support patch and the interior remains sealed by the support patch when the strap handle is in use (column 3, lines 58-67 through column 4, lines 1-8).

Regarding claim 25, the end (1) where the strap handle (24) is arranged is considered to be "reclosable to the same degree as claimed."

Regarding claim 28, Huckriede et al. discloses the packaging container to have a "parallelepipedic configuration in the filled state" (column 2, lines 55-56, which meets the recitation "having a stand-up bottom."

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 17-20, 24, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huckriede et al.

Regarding claim 17, Huckriede et al. discloses the claimed device except for a grip opening in the wall area that is torn to release the access opening. Huckriede et al. discloses in the embodiment of Figs. 5-7 that it is known in the art to provide a grip opening (41) in an analogous wall area. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the wall area of Huckriede et al. (Figs. 1-4) with the grip opening (41) of Huckriede et al. (Figs. 5-7), in order to facilitate releasing the access opening.

Regarding claims 18 and 19, Huckriede et al. discloses the claimed invention except for the container wall comprising an inner layer of polyethylene and an outer layer of PET. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an inner layer of polyethylene and an outer layer of

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PET to make the container wall of Huckriede et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 20, Huckriede et al. discloses the claimed invention except for the strap handle being comprised of a thermoplastic plastic film or a composite film that is made of thermoplastic plastic material and polyester. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use thermoplastic plastic film or a composite film that is made of thermoplastic plastic material and polyester to make the strap handle of Huckriede et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claims 26 and 27, Huckriede et al. discloses the claimed invention, as discussed above, except for the container having gussets. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Huckriede et al. with gussets, since it was known in the art that gussets on packaging containers facilitate collapsing the packaging containers to assume a flattened configuration.

### ***Allowable Subject Matter***

7. Claim 23 is allowed.

***Response to Arguments***

8. Applicant's arguments with respect to claims 13, 15-20 and 23-28 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims

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“define a patentable invention” without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, “The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims.” Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/  
Primary Examiner, Art Unit 3782